

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

JOSE VARGAS

Criminal Action No.

1:11-CR-239-CAP-20

**THE GOVERNMENT AND DEFENDANT'S
JOINT PLEADING REGARDING
RESENTENCING UNDER UNITED STATES
SENTENCING GUIDELINES AMENDMENT 782**

The United States of America, by John Horn, Acting United States Attorney, and J. Elizabeth McBath, Assistant United States Attorney for the Northern District of Georgia, along with the Federal Defender Program, Inc., by Stephanie Kearns, Executive Director, files this pleading regarding resentencing Defendant under United States Sentencing Guidelines Amendment 782.

The United States Sentencing Commission promulgated Amendment 782, effective November 1, 2014, whereby the Commission lowered the penalties for most drug offenses by reducing offense levels on the Sentencing Guidelines Section 2D1.1 Drug Quantity Table by two levels. Under Amendment 788, Amendment 782 may be applied retroactively.

Given this mandate, the parties have reviewed Defendant's case file to determine if Defendant is eligible for resentencing. After this review, the parties have concluded that Defendant is indeed eligible under the law for resentencing because Amendment 782 lowers Defendant's base offense level.

Defendant was originally sentenced on April 17, 2012, to a term of 78 months' imprisonment. Defendant's original Guidelines range was calculated as follows:

Base Offense Level: 34
Safety Valve: -2
Acceptance of Responsibility: -3
Total Offense Level: 29
Criminal History Category: I
Resulting Guidelines Range: 87 - 108 months

Defendant also faced a mandatory minimum sentence of 120 months, which the Court found did not apply because he qualified for Safety Valve. The Court varied from 87 months to 78 months based on 18 U.S.C. § 3553(a) factors.

Amendment 782, however, changes Defendant's Guidelines calculations to the following:

Base Offense Level: 32
Safety Valve: -2
Acceptance of Responsibility: -3
Total Offense Level: 27
Criminal History Category: I
Resulting Guidelines Range: 70 - 87 months

With these Guidelines changes, Defendant's low-end of the Guidelines range has decreased from 87 months' imprisonment to 70 months' imprisonment. The parties thus recommend that Defendant be sentenced to 70 months' imprisonment. A proposed Order will be emailed to the Court's Chambers.

Dated: This 30th day of March, 2015.

Respectfully submitted,

JOHN A. HORN

Acting United States Attorney

/s/ J. ELIZABETH MCBATH

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CERTIFICATE OF SERVICE

I served this document today by filing it using the Court's CM/ECF system, which automatically notifies the parties and counsel of record.

J. ELIZABETH MCBATH
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Dated: This 30th day of March, 2015.

/s/STEPHANIE A. KEARNS

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